

IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE

In re Patent Application of
MARK JAMES BECKMAN
correspondence

Serial No.: 09/301,868

Filed 04/29/99

For: SNACK PACKAGE ADAPTER
FOR A BOTTLE

I hereby certify that this

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ADDRESSED TO:

Commissioner of Patents
and Trademarks, Washington,
D.C. 20231 on
18 February 2007

/s/

John E. Halamka

Dated: 18 February 2007
Palos Verdes Estates, CA

Prior Examiner: HAO MAI

Present Examiner: Keith Hendricks, Primary Examiner
THAKUR, VIREN A

RESPONSE TO OFFICE COMMUNICATION concerning this
application

Dated 20070103 referencing

RESPONSE TO OFFICE ACTION DATED 03/30/01

RECEIVED BY THIS OFFICE 10/10/04

RESPONSE FILED BY THIS OFFICE 10 December 2004

Honorable Commissioner of Patents and Trademarks
Washington, D. C. 20231

Kindly find a current print out via PRIVATE PAIR for the "Attorney of Record" for the above identified application. I appreciate that the address listed is the address of this office BUT the name of the attorney of record is listed as SCOTT, GENE, as shown by the attached copy of attorney information downloaded from the USPTO even though I submitted a Declaration and Power of Attorney with the response to office action dated 03/30/01, with the petition to revive, with the request for access to the file upon request for a copy of the file wrapper and with

the request for access to the file through PRIVATE PAIR. Please change the records in the USPTO to reflect that this office is the attorney of record which office consists of a sole practitioner, JOHN E. HALAMKA.

Responsive to the communication having a date of 20070103 under paper number and a cover letter dated 01/19/07 regarding a reply filed by this office on December 10, 2004:

Examiner Thakur states that the response filed by this office on December 10, 2004 did not address the issues raised by Examiner HAO MAI in the FINAL rejection mailed March 30, 2001.

The examiner further states that the examiner believes the response filed December 10, 2004, was a bona fide reply. This Office kindly thanks the Examiner for that finding. As the examiner may be aware, the history of this application is very colorful. The office action dated 03/03/01 has a mailing address of the original office, Patent Law & Venture Group in Costa Mesa, CA. It was not mailed to this office even though notice was given to the prior examiner, Mr. HAO MAI, that this office was to be substituted as a NEW attorney of record with power of attorney enclosed. Thus most of the response energy and focus of that response by this office was the revival of the application as the mis-mailing by examiner Mr. HAO MAI caused the application to become abandoned by notice of abandonment, paper 8, issued by examiner Milton I. Cano rather than answer all of the issues raised by Examiner Mr. HAO MAI.

ORIGINAL RESPONSE WAS AS FOLLOWS:

Responsive to the Office action dated 03/03/01, it is requested that the attached Continuation in Part be filed in place of the pending application 09/301,868 and that the original application be abandoned in place of the Continuation in Part.

The original application was marked abandoned for failure to respond to this office action. Such failure was unavoidable as the action was not mailed to myself, the new attorney of record, nor to the prior attorney of record.

A petition to revive the original patent is also enclosed.

The examiner has found that the respond to Paper 5, filed by John E. Halamka, adds new matter to the patent application. Applicant's attorney respectfully disagrees but knows that a better response is to file the application again with the "new matter" as a continuation in part. This is the course of action taken along with the petition to revive.

Applicant's attorney respectfully requests the filing of the Continuation in Part with the priority of the original patent application pending its successful revival.

Upon consideration of the above remarks, the applicant respectfully believes that the application will be found in condition for review and such review is respectfully solicited.

As this response is mailed within 2 months of actual receipt of the office action Applicant's Attorney does not believe any fees for late filing are due. However, if any are due, Applicant's Attorney hereby authorizes a charge to his deposit account 080207.

Respectfully submitted,
John E. Halamka

NEW RESPONSE TO THE COMMUNICATION DATED 20070103

Responsive to the Communication requesting further response to the issues raised in the office action mailed March 30, 2001, paper 7, applicant's attorney respectfully states:

Paragraph 1 of office action mailed March 30, 2001.

In the first office action the examiner had objected to the use of the terms "adapted" and "enable" as the examiner believed such terms do not positively recite the claimed invention. The dictionary "quick definition" of adapted stated that it is an adjective: changed in order to improve or made more fit for a particular purpose.

The use of the terms adapted and enable as used in the application are clearly instructive to one skilled in the art to not simply take a pre-packed snack, off-the-shelf, such as a bag of nuts, M&Ms or a candy bar and simply stick it on a beverage bottle without some "fabrication or repackaging of the snack" in an appropriate envelope to conform to the size limits of the containment space and dispensing route within a vending machine as set forth in the PARTICULAR PURPOSE, inventive step and problem solved by the invention of the application.

This office responded to the examiner's objection to the use of "adapted" and "enable" by inserting new words. However the examiner found that the new words set forth in the amendment filed 1-5-01 introduces new matter into the disclosure.

The examiner identified the new matter as:

- A. "preselected to be of a size";
- B. "preselected thickness";
- C. "selected"
- D. "a catch"; and

- E. “allowing the combination to occupy substantially the same space as a drink bottle alone.”

In the original response to the examiner's finding of NEW MATTER, applicant's attorney stated that he respectfully disagrees with examiner's finding. This opinion is hereby supported by the following:

The original application, page 5, lines 10-13 states:

“The prior art does not teach that a container may be adapted for the storing a solid food in such a space that does not appreciable increase either the height or the diameter of a standard bottle of beverage. The present invention fulfills these needs and provides further related advantages as described in the following summary.”

On page 6, lines 7-11, the application further states:

“Another objective is to provide such a combination that enable the presentation of a snack with a bottle taking up more diametrical space than the bottle alone.”

“A further objective is to provide such a combination that enables the merchandising of a drink and a snack in combination without taking up more height that with the bottle alone.”

On page 6, lines 12-13, the application further states:

“A still further objective is to provide such a combination that is enabled for use in a standard vending machine without modification of the storage or dispensing apparatus of the machine.”

These statements support the inventive procedures of statements A., B., and C. above to instruct others skilled in the art to give substantial engineering effort to preselect, i.e. select a size and thickness of the material used to create the envelope which upon the condition of containing the snack and so formed and subsequently attached to the beverage bottle, the “preselected to be of a size and fabricated of a material having a thickness so that when filled with a selected snack (probably not selected to be a corn or potato chip snack unless said snack is of a compressed nature)” said snack envelope does not increase the height or diameter of the standard bottle of beverage and thereby fits into the same space in the vending machine previously allocated to the bottle of beverage alone.

The application then describes the best mode inventor knew at the time of how to fabricate an envelope to hold a snack yet be of a preselected size so that upon being attached to a beverage bottle, the

combination would fit into the existing storage space of a vending machine and when selected by a purchaser would travel the internal route within the vending machine to be come available to the purchaser without jamming the route or the combination becoming disengaged until the purchaser disengages the snack envelope from the bottle.

Further, the drawings, as set forth in the application and described in the specification, depict the relative size and shape of the SNACK envelope to one skilled in the art so as to guide the implementation of the invention. One skilled in the art would certainly not just attach a ½ ounce snack nor attempt to attach a one pound snack to the beverage bottle. Such limitations of the invention are certainly clear. The language of instruction to the user of the invention to preselect the envelope and type of snack so that under the condition of the snack filled envelope attached to the beverage bottle, the combination may be placed in the same vending machine storage area previously holding a beverage bottle alone critically limits the elements. The simple statement to some one using the invention to “preselect”, or simply plan ahead, should not be considered as NEW MATTER. Therefore applicant’s attorney respectfully requests that the NEW MATTER finding by examiner HAO MAI be reviewed and that finding be overturned.

Paragraph 3 of office action mailed March 30, 2001..

The examiner sets forth the rejection of claims 10-17 in paragraph 3 of the office action as containing subject matter not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time of the application was filed, had possession of the claimed invention. The specification does not have the support for the following terminologies:

Fabricated,

Selected,

A catch,

Allowing the combination to occupy substantially the same space as a drink bottle alone,

Without releasing the snack food from the envelope

Thereby allowing a user to remove the snack envelop(sic).

As set forth above, the language of the specification clearly supports the inventive steps of “fabricating” an envelope to hold the snack as it is particularly constrained by the objectives of the specification so that one skilled in the art would anticipate having to design and build an envelope rather than search what is available off-the-shelf. It is further logical that one skilled in the art would “select” material of a certain thickness and qualities to hold a snack without

spilling, be pliable so as to fold around the neck of a beverage bottle and be capable of being attached to the beverage bottle all within the constraints set forth in the objectives of the application. Thus, applicant's attorney hereby respectfully sets forth the firm opinion that all of the terminologies are fully supported and very clearly directive to one skilled in the art to design a snack package that can be filed, be attached to a beverage bottle, be mounted in a vending machine space formerly occupied by a beverage bottle alone, travel the route in a vending machine from said space to the dispensing tray space, be removed from said tray without splitting and spilling the snack until the purchaser chooses to remove and open the envelope to consume the snack while enjoying the companion beverage.

"Allowing the combination to occupy substantially the same space as a dink bottle alone" is strongly supported by the language in the original application.

The limitation of "without releasing the snack food from the envelope" is strongly implied in the original language of the specification that describes handling a snack envelope, folding the envelope around or over the bottle, attaching the envelope to the bottle (THEREBY implying (and supporting the fabrication requirement) that the envelope should be attached in a manner to allow the subsequent removal of the snack envelope from the bottle without spilling the snack), and vending the combination by means of an internal pathway of a vending machine which everyone (not only those skilled in the art) knows ends in a "CLUNCK" as it is deposited into the dispensing tray requiring an envelope, attachment and fabrication be in a manner such that the combination not become separated or damaged as it is implied in the specification that the combination is intended to be consumed without contamination or health hazard to the purchaser.

Paragraph 5 of office action mailed March 30, 2001..

The examiner rejected claims 10-17 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "substantially" in claim 10 is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Claim 10 is unclear as to what applicant trying to claim by "a cylindrical envelop(sic) outer wall joined to the inner wall".

If an envelope is to be formed from an “inner wall” and an “outer wall” (so as to distinguish which wall to set next to the beverage bottle, then the walls must be joined so as to contain the snack item preselected to fill the envelope before attaching said envelope to said beverage bottle so that the snack does not fall out of said envelope AND after being attached to said bottle is diametrically and height wise occupies “substantially” the same space as the bottle alone. Of course the space is a bit larger as the two items are not taught to be fused but a reasonable person in the art can easily be instructed from this language that the placement of the combined objects should be such that a crowbar need not be used to insert the combination into the vending machine space formerly occupied by the beverage bottle alone so as to not damage, separate or otherwise mutilate the combination.

Claim 17 recites the limitation “a snack food”. There is insufficient antecedent basis for this limitation in the claim. Claim 10 has already claimed “a snack food”.

From the original application- “Claim 17. The combination of claim 14 wherein the envelope has an access means positioned in opposition to the bottle cap so as to enable access to a snack food within the envelope.”

Claim 10 recites “a sealed snack envelope adapted for receiving a snack food” which certainly is sufficient antecedent. Further, the limitation of “a snack food” is not introducing the “snack food” again but imposing a limitation on the “access means”.

Thus, claim 17 should not be rejected for lack of antecedent or double introduction of a snack food.

Paragraph 7 of office action mailed March 30, 2001.

Claims 10, 14-15, and 17 are rejected as being anticipated by Selz (4,693,410). Selz teaches drink bottle providing a cylindrical bottle wall joined axially with a diminished diameter bottle neck, the bottle neck terminating at a removal bottle cap; and a snack package fabricated as an envelop(sic) having an inner wall and an outer wall having a sealable opening mounted on the outer wall for removably receiving a snack food, the snack package envelope having a cylindrical envelope outer wall joined to the inner wall, terminating with an aperture at one end thereof, the aperture having a size and shape for accepting the bottle neck and cap, there is a positioning of the inner surface of the snack envelope inner wall intimately against the bottle wall for securement therewith (fig.

13), the aperture further providing a concentrically oriented cylindrical inner wall for engagement with the bottle cap, the snack envelop extending diametrically from the bottle wall no more than by the thickness of the outer envelop wall (figs. 17-18).

Regarding claims 14 and 15, see figs. 3-4).

Applicant's attorney has attempted to ANALYZE AND SEE WHAT FIGURES BECKMAN OR SELZ ARE AND HOW THEY PERTAIN to examiner's comment but cannot ascertain what is the basis for rejection of the claims based upon the figures. Thus, no argument can be constructed against or supporting this comment. Upon clarification, applicant's attorney certainly will comment appropriately.

Regarding claim 17, see fig 10).

Again, applicant's attorney has attempted to ANALYZE AND SEE WHAT FIGURES BECKMAN OR SELZ ARE AND HOW THEY PERTAIN to examiner's comment but cannot ascertain what is the basis for rejection of the claims based upon the figures. Thus, no argument can be constructed against or supporting this comment. Upon clarification, applicant's attorney certainly will comment appropriately.

Applicant's attorney has reviewed all of the objections of the examiner for finding an inventive quality to this application over the prior art and responds to the points as follows:

The patent examination process measures if a significant inventive process has been demonstrated by the applicant so as to grant certain rights.

One of the measures is the solution of a problem that has not been solved before by others because if it has previously been solved, then the requirement for a new inventive step has not been established and no patent rights are earned.

The Examiner in this application has found that others have solved the problem sought to be overcome by the present invention and has thus denied any inventive step to the applicant.

The prior art cited by the examiner consists of:
SELZ = an empty cup that can be attached to an open beverage bottle container or open beverage can container to preserve the contents of the container as well as used as a vehicle to consume the contents of the container;

BARNES et al. = packaging for storing and cooking an omelet consisting of a can of eggs and can of filling fastened together so that the purchaser may open the filling, pour the contents into the container of eggs and then cook the mixture into an omelet within the container using an external, user source of heat;

REA et al. = spiral slit container allowing said container to be subject to easy zip open packaging surrounding raw dough and a can of frosting or topping to be applied to the dough after the dough is cooked; and,

LaBARBERA = an over-cap closure device.

most of the prior art cited by the examiner stems from a foreign search report, the international preliminary examination report performed under international application no. PCT/US00/11269 which was completed 12 July 2001 by HAO MAI, authorized officer and Jean Proctor, paralegal specialist. Mr. HAO MAI is no longer employed by the USPTO. My efforts to contact him by phone shortly after receiving the international search report were unsuccessful. My request for Status dated March 2001 of the underlying U.S. patent application to which Mr. MAI cited the same prior art to the PCT patent application as well as my response dated October 21, 2002 to the international search report to Mr. HAO MAI remain pending in the USPTO. The present status of the file is that the U.S. Patent application was recently revived on petition so is in good standing to support this additional response to the office action dated 03/30/01 and the review and entry of these comments is respectfully requested.

International Search Report Analysis -

From section 2. citations and explanations:

Claims 1, 6, 10, 14-15 and 17 (of the Beckman application) lack an inventive step under PCT Article 33(2) as
being obvious over SELZ (4,693,410).

. The report characterizes the teaching of SELZ as teaching a

“drink bottle providing a cylindrical bottle wall joined axially with a diminished diameter bottle neck, the bottle neck terminating at a removal bottle cap;
(This is language quoted from the application of Mark Beckman, as set forth in claim 10)
AND (emphasis added)

a snack package fabricated as an envelope having an inner wall and an outer wall having a sealable opening mounted on the outer wall for removably receiving a snack food, the snack package envelope having a cylindrical envelope outer wall joined to the inner wall, terminating with an aperture at one end thereof, the aperture having a size and shape for accepting the bottle neck and removable cap and located so the under the condition of the aperture engaged with the bottle neck and cap, there is a positioning of the inner surface of the snack envelope inner wall intimately against the bottle wall for securement therewith (fig. 13) (emphasis added), the aperture further providing a concentrically oriented cylindrical inner wall for engagement with the bottle cap, the snack envelop extending diametrically from the bottle wall no more than by the thickens of the outer envelop wall (figs. 17-18)."

(This language is also from the Beckman application, claim 10 EXCEPT for (fig. 13) and (figs. 17-18). The Beckman claims contain no references to figures.

The true facts are that the Beckman application does not contain a figure 13, 17 or 18. Hence, the insertion in the International Report must be a reference to figures from SELZ. An analysis of the figures of SELZ follows.

A reading of SELZ discloses a teaching of a plastic drinking cup which may be connected to the OPEN ENDS of beverage bottles and/or OPENINGS in the top walls of metallic or plastic beverage CANS to sealingly engage with and to swivel relative to the partly spherical external surface of a bottle or can.

SELZ provides a cup attached to a bottle or can to dispense and consume the contents of the container with part of the cup functioning as a removable closure to retain liquid inside the container for a partially emptied bottle or can. The closure, while retaining the liquid, such as a carbonated beverage, provides a relief valve so that the internal pressure will not disengage the closure and allow the remaining liquid to spill. The cup may be disengaged manually, without opener or tools, and the remaining liquid dispensed.

Upon careful word by word reading as well as a computer search of SELZ, nowhere is disclosed the words or phrases:

Envelope
Snack package

Bottle neck
Removable cap
Securement of envelope

Attached is Fig. 13 from SELZ, as referenced in the report, for your examination to verify that the container is empty and cannot be filled with product such as a snack and then attached to the beverage bottle.

The teaching of SELZ, for Fig. 13 is:

FIG. 13 shows a modified vessel which has a substantially cylindrical cup 1 and a closure 20 which can be applied to the upper portion of metallic or plastic can 21. As shown in Fig. 14, the top wall portion 25 of the can 21 has a customary lift-off lug 22 which is connected with an integral section 25a of the top wall portion 25 and can remove the section 25a so as to form an opening 39 (FIG. 22) bounded by a marginal zone 38 of the top wall portion 25. An important advantage of the vessel of FIG. 13 is that it comprises a closure 20 which can seal the opening 39 from the surrounding atmosphere, a task which cannot be achieved by resorting to customary corks or analogous stoppers.

There is no snack package or snack contained within cup 1. The sealing of the cup 1 to the can 21 is at the open end 25. Fig. 17-18 of SELZ are also attached. The SELZ patent, Fig. 17 shows the combination of a can 21 and a vessel which is similar to the combination of Fig. 13 of SELZ except that the closure 20 comprises a single annular seal 23. This the peripheral portion 28 of the bottom wall 29 of the cup 1 is spaced apart from the conical surface 36 of the marginal portion 27 of the can 21 when the internal shoulder 30 of the marginal portion 27 of the can when the internal shoulder 30 of the tubular wall 12 engages the lower edge face of the bead 31.

Fig. 18 of SELZ shows a further modification with a closure 20. ... The structure Fig. 18 is desirable and advantageous when the manufacturer of the cup 1 desires to further reduce the likelihood of escape of some liquid into the space between the tubular wall 12 and the external surface of the cylindrical wall 50.

The inventive step of SELZ is to provide a cup, attachable to a beverage container be it a bottle or can, to seal said beverage container to prevent spilling any remaining liquid within said container until the user is ready to consume the remaining liquid which may be accomplished directly from said container or by means of the cup.

SELZ does NOT suggest filling the cup with anything other than the contents of the open beverage container. SELZ does teach inserting

the beverage container into the cup for convenience but fails to teach attachment to the container other than to an open container. Hence the use of SELZ as prior art is not at all proper and applicant's attorney respectfully insists that the SELZ prior art must be withdrawn.

Analysis of Milk bottle Patent US 5,318,787 (BRAUNER) NOT CITED AS PRIOR ART TO THE PRESENT APPLICATION in the 03/30/01 office action but is discussed here in the interest of full review as BRAUNER was cited in the original application as prior art.

BRAUNER was also cited by U.S. Examiner, Mr. HAO MAI, in the international search report, applicant's attorney's analysis is as follows: The object of this patent is to provide a safe distribution of a FREE sample (emphasis added) of a co-product such as a breakfast cereal to the purchaser of milk in an effort to entice the purchaser to try out the product in anticipation of generating a market for the sampled product. It is no more "inventive" then the attachment of a free sample of a bar of soap, an envelope of body cream, or even just a coupon to the plastic wrap of a newspaper or magazine. The idea is marketing of a small sample of a product using an existing distribution system not to add value to the newspaper or magazine. Had the invention managed to attach a box of cereal to a container of milk so that the purchaser could simply grab one item and pay for it as a convenience rather than having to go to the milk case and then go over to the cereal shelving, the invention may be applicable as prior art to the Beckman application. However, because BRAUNER only attaches a cup of cereal to the gallon of milk and the attached container is not even taught to be usable as a bowl into which the milk can be poured and from which the cereal may be consumed, the BRAUNER combination is clearly a marketing sample device not a convenience nor an add on product for which the seller may increase the price. The Beckman invention is to combine a snack and a beverage into the same space as a beverage thereby allowing the vender to increase the price of the item while providing two consumable items that do not require additional utensils to consume. The present invention is to add value to an existing product within its distribution system at a point that does not interfere with the existing product and may even enhance the existing product such as adding peanuts to a bottle of cola, a favorite combination.

The milk patent' 787 teaches using unused space in a milk distribution box to distribute a free sample of a new product in a manner that protects the free sample and does not interfere with the primary product. The invention does not teach adding value to the primary product so that the price of the combination of the primary product and

the sample may be increased resulting in increased efficiency and profit by utilizing the existing distribution system.

The present invention expressly teaches the increased efficiency of use of existing space by combining two vending or distribution systems into a single system by using underutilized space in the bottle distribution system – filling the unused space with a companion product thereby allowing the vending or distribution system to increase revenue with minimal increase in effort (the attachment of the companion product to the bottle before insertion of the bottle into a vending machine or placement at a distribution point such as a concession stand at a ball park.

Paragraph 9 of office action mailed March 30, 2001..

Claims 11-12 are rejected as being unpatentable over Selz in view of Barnes (teaches the use of tape)

Analysis of products stuck together by tape or mounted in a container with a spiral opening”

The examiner has rejected the Beckman claims in view of BARNES as it discloses a adhesive tape to join the upper and lower container. However, the containers are for eggs and additions to eggs after which the mixture must be cooked into an omelet requiring not only kitchen utensels but a stove. Very different from a snack and a beverage, both instantly consumable food products. Further, the use of tape by Barnes is to associate the two cans which must be stacked on a shelf with no teaching of associating the cans in the same space in a vending machine formally occupied by only one of the cans.

The use of tape to associate products or to hold things in place is well established in the art and is not considered or claimed by Beckman to be an inventive step by the applicant. The claims involving the use of tape by Beckman are dependent in nature and contain all of the limitations of the claims upon which they depend, particularly having a snack container, which applicant's attorney respectfully submittes contains an inventive step. Hence these claims should be allowable.

If all the packaging solutions that have been invented to date are to be used as prior art to prevent the patenting of any product now invented that requires packaging, without consideration of the inventiveness of the unpackaged product, no products that are packaged can possibly be patented no matter how inventive the product. Applicant's attorney respectfully traverses the examiners rejection of the underlying invention

of the product just because it is packaged in some manner and that manner is used in the prior art to package a dissimilar product for a dissimilar purpose.

Paragraph 10 of office action mailed March 30, 2001..

Claim 13 is rejected as being unpatentable over Selz in view of Rea (spiral score container)

The examiner has rejected the Beckman claims in view of REA et.al. because Rea teaches combining raw dough which must be cooked and a can of topping such as frosting which may be slathered on the dough after it is cooked. Again, this invention requires not only utensels but an oven and assembly before consuming the food. Far different from a snack and a beverage which can be immediately consumed without assembly and cooking.

Making a package easy to open by providing a spiral seam such as used by Rea is not claimed by applicant to be an inventive step as the spiral slit is set forth in a dependent claim incorporating all of the limitations of the claims upon which it depends.

Further, both BARNES and REA are packaging solutions not the invention of a combination of products that can be vended from the same space or assembled to be sold as a unit at a ball park so that only one item has to be handled and rung up as a sale with combined value. The ball park does not generally provide a stove or oven to cook food purchased from a vender or from a vending machine as required to use the product in REA device .

Paragraph 11 of office action mailed March 30, 2001..

Claim 16 is rejected as being unpatentable over Selz in view of LaBarbera (Caps having protuberance is a plurality of boses (sic.) LaBarbara teaches that this protuberance is an improve wedge-fastening mechanism(see col. 1, lines 45).

LaBARBERA teaches an over-cap device that snaps down over the dispensing spout. The inventive step in LaBARBERA is a cap resulting in a top surface without sink marks. The attachment of an over-cap as taught by LaBARBERA is not claimed as an inventive step by Beckman. The container or cap of the Beckman invention contains a snack. LaBARBERA's cap is protective and cosmetic in nature without any teaching of placing any product whatsoever within the over-cap before it is attached over the dispensing spout of the container containing the

product to be used by dispensing it from the over-cap protected dispensing spout. The Beckman invention fills the CAP with a snack and then attaches it over or around a beverage container. It does not protect the beverage container opening.

Paragraph 12 of office action mailed March 30, 2001..

Applicant's arguments with respect to claims 10-17 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's attorney respectfully requests a complete REVIEW THE ARGUMENTS as the new ground(s) of rejection based primarily on SELZ should be withdrawn as SELZ is shown to not be a proper prior art teaching of a SNACK and a BEVERAGE combination.

PAIR shows the communication from the examiner to be dated 01/19/07, thus the one month time limit granted by the examiner expires 02/19/07. This response is filed before 02/19/07 thus no extension request or authorization to pay extension fee is included herein. Should Applicant's Attorney be mistaken, the examiner is hereby authorized to charge an extension fee of one month to deposit account 080207.

Applicant's attorney anticipates that all of the issues are resolved but if something needs clarification, he holds himself ready to timely respond to a phone call or other communication.

Upon consideration of the above remarks, the applicant respectfully believes that the application will be found in condition for review and such review for allowance is respectfully solicited.

Respectfully submitted,
/s/

John E. Halamka